IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 126 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
AMOL DICALITE LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 29/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. The Income-tax Appellate Tribunal has referred to

this Court the following two questions for opinion in terms of Section 256 (1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act". Those two questions are under :

(i) Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer not to deduct the amount of subsidy from the cost of assets for the purpose of calculation of depreciation ?"

(ii) "Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to treat the ore shed as plant and allow depreciation allow depreciation and extra shift allowance ?"

2. Before this Court address itself to the legal position on the subject, few facts may first be noticed.

3. The assessee was manufacturing filter aids. In the course of assessment proceedings for assessment year 1985-86 the assessee claimed depreciation of ore shed and road to factory at 10% on the ground that they were plants. The Assessing Officer rejected this claim of the assessee as they were not treated as plants for the assessment year 1983-84. Further the Assessing Officer

while computing the income deducted amount of subsidy from the costs of the assets.

4. Feeling aggrieved the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) who directed the Assessing Officer not to deduct the amount of subsidy from the cost of assets for the purpose of calculation of depreciation and also directed the Assessing Officer to treat the ore shed as plant and allow appropriate depreciation and extra shift allowance.

5. The Tribunal has confirmed the view taken by the CIT (Appeals) that the amount of subsidy should not be deducted while computing the costs of assets. Such view was taken on the basis of the judgment of the Gujarat High Court in the case of Commissioner of Income-tax Vs. Grace Paper Industries P. Ltd. (183 ITR 591). Since the Supreme Court had granted Special Leave Petition in similar matters, the question No. 1 has been referred to this Court at the instance of the Revenue.

6. As far as the second question is concerned, it has been observed by the Tribunal that ore shed is a very special type of structure wherein the machineries are built-in and such facilities have been created which enable the smooth feeding of the loose raw material to the plant for further process and such structure is an

integral part of the entire plant.

7. Though the assessee is duly served it has neither appeared through its authorised officer or a lawyer.

8. This Court has heard Mr. Tanvish U. Bhatt, learned counsel for the Revenue at length and in great detail.

9. The direction given by the Tribunal to the Assessing Officer not to deduct the amount of subsidy from the cost of assets for the purpose of calculation of depreciation cannot be regarded as erroneous in view of the decision of the Supreme Court rendered in the case of **the Commissioner of Income-tax Vs. P.J. Chemicals Ltd., reported in 210 I.T.R. 830**. In the said decision, after review of the law on the point, the Supreme Court has held as under :

> "Whether Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy being only measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the "actual cost". The expression "actual cost" in Section 43 (1) of the Income-tax Act, 1961 needs to be interpreted liberally. Such a subsidy does not partake of the incidents which attract the conditions for its deductibility from "actual cost". The amount of subsidy is not to be deducted from the "actual cost" under Section 43 (1) for the purpose of calculation of depreciation, etc."

10. In view of above referred to principle stated by the Supreme Court, the first question referred to this Court for opinion, will have to be answered in affirmative and it is answered accordingly.

11. As far as the second question is concerned, this Court finds from the facts adduced by the assessee, held that the ore shed performs functions of the “plant” and is an integral part of it. On appreciation of evidence adduced the CIT(A) has held that without this ore shed including ore hopper with foundation and feed steel type tank, it will not be possible to feed the material in the plant for further process. The finding recorded by the Commissioner of Income-tax (Appeals) is that the trucks carrying raw material are emptied on special plat-form in the ore shed which is equipped with built-in machineries to transfer this material to the plant for further process and therefore, the ore shed should be treated as part of the plant. These findings have been upheld by the Appellate Tribunal which is quite evident from the findings recorded in para 3.1 (b) and 3.1 (c) of the order of the Tribunal.

12. The finding that the ore shed performs the function of the plant and is an integral part of it, is based on appreciation of the evidence adduced by the assessee

and this finding is not demonstrated to be erroneous. On careful scrutiny of the evidence it is clear that the ore shed is situated within the factory premises and this is a special type of structure wherein the machineries are built-in and the facilities are created so that the loose raw material is smoothly fed to treat the ore shed as plant. The evidence shows that the ore shed performs the functions of the plant and is an integral part of the plant and machinery. The finding that ore shed is plant is recorded on the basis of evidence adduced and is a question of fact. Under these circumstances, the directions given by the Tribunal to treat the ore shed as plant and allow depreciation and extra shift allowance, cannot be recorded as erroneous. Therefore, the second question referred to this Court for its opinion will have also to be answered in the affirmative and it is accordingly answered.

13, The Reference accordingly stands disposed of . There shall be no order as to costs.

(J.M. Panchal, J.) (Bankim N. Mehta, J.)

/JVSatwara/